

1 LAW OFFICES  
2 BROENING OBERG WOODS & WILSON  
3 PROFESSIONAL CORPORATION  
4 POST OFFICE BOX 20527  
5 PHOENIX, ARIZONA 85036  
6 TELEPHONE: (602) 271-7700  
7 FACSIMILE: (602) 258-7785  
8 Donald Wilson, Jr./Bar No. 005205  
9 Attorneys for Plaintiffs

6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF ARIZONA

8 U-Haul International, Inc., a Nevada  
9 corporation; e-Move, Inc., a Nevada  
10 corporation,

11 Plaintiffs,

12 v.

13 Hire a Helper, LLC, a California limited  
14 liability company; Michael Glanz and Amy  
15 Glanz, husband and wife; John and Jane  
16 Does I - X; ABC Partnerships I – X; XYZ  
Corporations I – X,

Defendants.

PLAINTIFFS' APPLICATION FOR  
PRELIMINARY INJUNCTION ORDER  
WITH NOTICE

**(ORAL ARGUMENT REQUESTED)**

17 Plaintiffs move for a preliminary injunction, pursuant to Rule 65(a), Federal Rules  
18 of Civil Procedure (F.R.C.P.). Plaintiffs seek to enjoin Defendants from using,  
19 reproducing and/or distributing the trade names, trade dress and service marks owned  
20 and/or exclusively licensed by Plaintiffs, whether registered or not, including but not  
21 limited to the names and marks "Moving Help®" and "Moving Helper®", in conjunction  
22 with the sale and advertising of Defendants' products and services. 15 U.S.C. §1125 *et*.  
23 *seq.*; 15 U.S.C. §1116.

24 Plaintiffs further request that Defendants be enjoined from copying, reproducing,  
25 distributing, publicly displaying or otherwise infringing or contributing to the  
26 infringement of Plaintiffs' copyright work including the creation of derivative works.

1 Plaintiffs' copyright work is located on the Web at <http://movinghelp.emove.com> and/or  
2 [www.emove.com](http://www.emove.com). Defendants' infringing work is located on the Web at  
3 [www.hireahelper.com](http://www.hireahelper.com). 17 U.S.C. §106; 17 U.S.C. §502(a).

4 This Motion is supported by the attached Memorandum of Points and Authorities,  
5 separately filed Statement of Facts and all exhibits thereto, including any records  
6 submitted under seal pursuant to order of this Court.

7 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of July, 2008.

8 BROENING OBERG WOODS & WILSON, P.C.

9  
10 By s/s Donald Wilson, Jr.

11 Donald Wilson, Jr.  
12 P. O. Box 20527  
Phoenix, Arizona 85036  
Attorneys for Plaintiffs

13 MEMORANDUM OF POINTS AND AUTHORITIES

14 I. INTRODUCTION

15 As thieves often do, Defendant Michael Glanz came cloaked in the dark of night.  
16 Over a period of five months, under the guise of participating in a commercial venture,  
17 Glanz gained entry to both the public and non-public portions of Plaintiff eMove's  
18 "Moving Helper® MarketPlace" website. He pilfered the thoughts, work, ideas, concepts  
19 and expressions developed by eMove over a period of more than five years. He then  
20 incorporated his own business and, utilizing the protected marks and misappropriated  
21 work of eMove, began advertising and marketing services over the Web. Defendants  
22 have knowingly stolen the industry of others and should be immediately enjoined.

23 II. SUMMARY OF FACTS RELEVANT TO APPLICATION FOR  
24 INJUNCTION

25 Plaintiff eMove pioneered the concept of on an online marketplace for connecting  
26 consumers seeking moving assistance with independent contractors who provide such

1 service. SOF ¶11. eMove's online marketplace is commonly known as the "Moving  
2 Help® MarketPlace" and is located at [www.emove.com](http://www.emove.com). Id.

3 U-Haul International owns and has granted eMove the exclusive right to use the  
4 registered trademarks "Moving Help®" and "Moving Helper®". SOF ¶ 8; Complaint, ¶s  
5 10-12. These trademarks were first used in commerce beginning in 2002 and 2004  
6 respectively. After years of creating, developing and designing its online marketplace,  
7 eMove went live on the Web with "Moving Help®" and the "Moving Help®  
8 Marketplace" in the format relevant to this Application on January 1, 2004. A  
9 subsequent updated version was created, published and fixed in copy August 2005. SOF  
10 ¶8, 22.

11 In 2006 and 2007, Defendant Glanz stole eMove's trademarks, trade secrets,  
12 copyrighted works, and service concept and incorporated Defendant Hire a Helper,  
13 L.L.C. to make its own directly competing marketplace. Defendants located their rip-off  
14 marketplace at <http://www.hireaahelper.com>. SOF ¶6. To create this competing  
15 website, Defendants used Plaintiffs' valuable service marks and copied Plaintiffs'  
16 copyrighted website. Glanz has also violated trade secret laws and breached his contract<sup>1</sup>  
17 with eMove by misappropriating such trade secrets and other proprietary information for  
18 himself and for Defendant Hire a Helper.

19 All acts of copying and unfair practices by Defendants occurred subsequent to  
20 Plaintiffs' ownership, license and/or use or registration of such marks and copyright  
21 works. SOF ¶8, 22.

### 22 III. STATEMENT OF LAW

23 This Court has the authority to issue a preliminary injunction pursuant to 15  
24 USCA § 1116 *et seq* (the Lanham Act), § 502(a) Copyright Act, A.R.S. §44-401 *et. seq.*,  
25

---

26 <sup>1</sup> Defendant Glanz also breached his contract with Plaintiff eMove as alleged in Plaintiffs' Complaint,  
Count Three, ¶¶ 41-48.

1 contract, common law and Rule 65, F.R.C.P.

2 A preliminary injunction requires proof the movant is likely to succeed on the  
3 merits of the case and that the movant will suffer irreparable harm if an injunction is not  
4 issued. *GOTO.COM v. Walt Disney Company*, 202 F.3d 1199, 1204 (C.A.9 2000).

5 A. PLAINTIFFS HAVE A HIGH LIKELIHOOD OF SUCCESS ON THE  
6 MERITS

7 1. TRADEMARK – LANHAM ACT

8 Defendants have used Plaintiffs’ valuable and federally registered “Moving  
9 Help®” and “Moving Helper®” trademarks throughout their hireahelper website to  
10 market their directly competing services, in violation of federal trademark law.

11 15 USCA § 1125(a) in the Lanham Act provides for civil liability against one  
12 who infringes upon another’s trade mark: “[A]ny person who, in connection with any  
13 goods or services, uses in commerce any word, term, name, symbol. . . or any  
14 combination thereof . . . which is likely to cause confusion, or to cause mistake.”

15 To establish infringement, a registered trademark holder must show it is (1) the  
16 owner of a valid, protectable mark and (2) the infringer is using a confusingly similar  
17 mark. *Grocery Outlet, Inc. v. Albertson’s Inc.*, 497 F.3d 949 (C.A.9 (Cal.) 2007).<sup>2</sup> In  
18 order to establish entitlement to a preliminary injunction in a trademark case, a plaintiff  
19 must show either: (1) a combination of probable success on the merits and the  
20 possibility of irreparable injury, *or* (2) the existence of serious questions going to the  
21 merits and that the balance of hardships favor plaintiff. *GOTO.COM v. Walt Disney*  
22 *Company*, 202 F.3d 1199, 1204 (C.A.9 2000). Plaintiff is entitled to a preliminary  
23 injunction in a trademark case under the Lanham Act if it can show that the defendant is  
24 using a mark confusingly similar to that of the plaintiff and that plaintiff’s use of that

25 \_\_\_\_\_  
26 <sup>2</sup> The same standards for liability apply to both registered and unregistered marks and trade dress. *Brookfield Communications Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036 (9<sup>th</sup> Cir. 1999); *U-Haul International, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1042 (C.A. 9<sup>th</sup> Cir. Ariz. 1986).

1 mark pre-dates use by the defendant. 202 F.3d at 1205.

2 (a) Likelihood of Confusion

3 Likelihood of confusion is shown if the similarity of the marks is likely to confuse  
 4 customers about the source of the product or service. *GOTO.COM v. Walt Disney*  
 5 *Company*, infra. The seminal case in the analysis of the establishment of confusion is  
 6 *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348 (9<sup>th</sup> Cir. 1979) which names eight  
 7 factors in determining the likelihood of confusion.<sup>3</sup> These elements have been referred to  
 8 as the *Sleekcraft* factors. *Brookfield Communications Inc. v. West Coast Entertainment*  
 9 *Corp.*, 174 F.3d 1036 (9<sup>th</sup> Cir. 1999). The *Sleekcraft* factors need not be established to  
 10 the same degree in each instance, nor must all factors exist. Rather, the test has been  
 11 described as a “pliant” one in which some factors are more important than others and in  
 12 some instances some of the factors do not apply. *Brookfield Communications Inc., supra*,  
 13 1054. The relative importance of each factor is case specific and likelihood of confusion  
 14 can be established after considering only a subset of the factors. *Id.*

15 (b) Likelihood of Confusion in the Context of the Web

16 In the specific context of the Web, it has been held that the three most important  
 17 factors for a finding of trademark infringement are (1) similarity of the marks, (2)  
 18 relatedness of the goods or services and (3) the simultaneous use of the Web as a  
 19 marketing tool. *Brookfield Communications Inc. v. West Coast Entertainment Corp.*,  
 20 infra.<sup>4</sup>

21 (i) Similarity of the Marks

22 The first single most important element in this claim is similarity of the marks.  
 23 *GOTO.COM v. Walt Disney*, infra. The greater the similarity of the marks, the greater the

---

24 <sup>3</sup> (1) Similarity of the marks; (2) Relatedness of the two companies’ services; (3) Marketing channel used; (4)  
 25 Strength of the Plaintiff’s mark; (5) Defendant’s intent in selecting its mark; (6) Evidence of actual confusion; (7)  
 26 Likelihood of expansion into other markets; (8) Degree of care likely to be exercised by purchasers. *Sleekcraft*,  
*supra* at 348-349.

<sup>4</sup> Nevertheless, where applicable to this application, reference to other *Sleekcraft* factors will be discussed.

1 likelihood of confusion. Id. Here, the trademarks are not just similar – they are identical.  
 2 In *Brookfield*, the trademark at issue was “MovieBuff.” The court of appeals found that  
 3 the infringing name “moviebuffonline.com” was essentially identical to the plaintiff’s  
 4 trademark name and enjoined the infringing use.<sup>5</sup> Id at 1055. See also *Public Serv. Co.*  
 5 *v. Nexus Energy Software, Inc.*, 36 F.Supp2nd 436, (DMass 1999)(“energyplace.com”  
 6 and “Energy Place” are virtually identical and confusing); *Minnesota Mining & Mfg. Co.*  
 7 *v. Taylor*, 21 F.Supp.2d 1003, 1005 (D. Minn. 1998) (“Post-it.com” and “Post-It” are the  
 8 same). Here, Plaintiffs own and/or are the exclusive licensees of the marks “Moving  
 9 Help®” and “Moving Helper®”. SOF ¶8, 22. Defendants use the terms “Moving Help”  
 10 and “Moving Helper” throughout their website. See for example,  
 11 <http://www.hireahelper.com/> Moving Help® link Services: Moving Help®;  
 12 <http://www.hireahelper.com/learn> Hire a Helper, Moving Help® link, SOF ¶12-25.  
 13 These marks are identical, cause confusion and infringe upon Plaintiffs’ protected service  
 14 marks.<sup>6</sup>

15 (ii) Relatedness of the Goods or Services

16 The second factor in determining confusion is whether the goods or services are  
 17 “related”. Related goods are generally more likely to confuse the public as to the  
 18 producers of the goods than are unrelated goods or services. *Brookfield, supra*. See also  
 19 *Official Airline Guides, supra*. Therefore, if the marks are identical or virtually  
 20 identical, combined with identical products or services, the likelihood of confusion  
 21 follows “as a matter of course.” *Brookfield, supra* at 1056. Here, eMove’s “Moving  
 22 Help® site functions as an online marketplace for connection between persons who wish

23 \_\_\_\_\_  
 24 <sup>5</sup> In concluding that the names were confusingly similar, the court of appeals stated “. . .many Web users are likely  
 25 to associate “moviebuff.com” with the trademark “MovieBuff”, thinking that it is operated by the company that  
 26 makes “MovieBuff” products and services.” *Brookfield, supra*, at 1034.

<sup>6</sup> Defendants have also infringed on Plaintiffs’ trade dress. The legal standard for trade dress infringement is  
 whether the “total image” of the product or work is similar. *Brighton Collectibles, Inc. v. Renaissance Group*  
*Inter.*, 239 Fed. Appx. 333 (CA 9<sup>th</sup> 2007); *Mattell, Inc. v. Walking Mountain Products*, 353 F.3d 792, 808 n. 13  
 (9<sup>th</sup> Cir. 2003). Here the work infringed upon is the “total image” that comprises eMove’s website.

1 to act as service providers or “Moving Helpers®” and customers. SOF ¶11. Defendant  
 2 Hire a Helper’s site at <http://www.hireahelper.com> “Moving Help” link offers exactly the  
 3 same service. SOF ¶15. The services are clearly of a direct, competitive nature and are  
 4 therefore “related”, weighing heavily in the likelihood of confusion.

5 (iii) Use of the Web as the Common Marketing Tool

6 “*The Web is a Very Different World*”  
 7 - *Goto.com v. Disney, supra*, at 1206.

8 The third element utilized to consider the likelihood of confusion is the marketing  
 9 tool used by the parties. Use of the Web as a marketing or advertising tool exacerbates  
 10 the likelihood of confusion.<sup>7</sup> *Brookfield, supra*. A website user on different sites would  
 11 “almost certainly” assume a common sponsorship if the sites’ trademarks are the same.  
 12 Id. The Web as a marketing channel is susceptible to the likelihood of confusion since it  
 13 allows competing marks to be encountered at the same time on the same screen. Id. at  
 14 1207. In *Brookfield*, the court concluded that given the similarity of plaintiff’s  
 15 trademark with defendant’s name, the relatedness of the products and services that  
 16 accompany those marks, combined with use of the Web as a marketing and advertising  
 17 tool, “many forms of consumer confusion are likely to result.” *Brookfield, supra* at 1057.  
 18 This is particularly true where, for example, a consumer looking for Plaintiff eMove’s  
 19 “Moving Help® MarketPlace, enters the words “Moving Help®” or “Moving Helper®.”  
 20 Search engines would recognize those words and pull up Defendant’s website, causing  
 21 actual and/or initial confusion.<sup>8</sup> (See also Section (c) “Initial Interest” Confusion, *Infra*).

22 (iv) The Other *Sleekcraft* Factors

23 There are other *Sleekcraft* Factors that the Court may consider in determining the

24 \_\_\_\_\_  
 25 <sup>7</sup> Even products or services that are not identical are capable of being confused by the public when marketed through  
 the internet. *Goto.com, supra* at 1206.

26 <sup>8</sup> Reaching a competitor’s website because of use of the owner’s marks has also been held to be a misappropriation  
 of Plaintiffs’ goodwill and is independently actionable. *GOTO.COM, supra*.



1 likelihood of success on the merits, including the strength of the Plaintiffs' mark, the  
 2 Defendants' intent in selecting its mark, evidence of actual confusion, the likelihood of  
 3 expansion into other markets and the degree of care likely to be exercised by purchasers  
 4 in determining the true source of the goods or services. *GOTO.com v. Walt Disney*,  
 5 *supra*, 202 F.3d 1199, 1205. For purposes of this Application, the following elements  
 6 may be considered by this Court.

7 (aa) Strength of Plaintiffs' Marks

8 It is the mark in its entirety that must be considered here and not simply any  
 9 individual element of the mark. *GOTO.COM, supra*. In *Brookfield*, the court found that  
 10 whether a mark is weak or not is of "little importance" where the infringing mark is  
 11 identical and the goods or services are closely related. *Id.* at 1059. In this case,  
 12 Defendants' use of Plaintiffs' marks "Moving Help®" and "Moving Helper®" and the  
 13 services provided by both are identical. Moreover, as will be discussed later, use of  
 14 Plaintiffs' marks in Defendants' metatags or HTML code is also evidence of the strength  
 15 of Plaintiffs' marks because use of those marks allow search engines to identify  
 16 Defendants' website to potential consumers. This is unfair practice that has caused and  
 17 will continue to cause harm to eMove if Defendants are not enjoined. *Id.*

18 (bb) Defendants' Intent in Selecting its Mark

19 It is well settled that if an infringer adopts his designations or marks with the  
 20 intent of deriving benefit from the reputation of the trademark, such intent may be  
 21 sufficient to justify the inference that there are confusing similarities.<sup>9</sup> *Brookfield* at  
 22 1059, citing to *Pacific Telesis v. International Telesis Comms.*, 994 F.2d 1364, 1369 (9<sup>th</sup>  
 23 Cir. 1993) and quoting *Restatement of Torts*, Sec. 729, Comment Clause (b)(f) (1938).

---

24  
 25 <sup>9</sup> Additional evidence of intent includes Defendant Hire a Helper's "purchase" of certain key words at Google that  
 26 identify Hire a Helper's website when the name "eMove" is entered and Defendant Michael Glanz' blog two  
 months before going live with [www.hireahelper.com](http://www.hireahelper.com), citing eMove's website design as one that should be  
 emulated. SOF ¶29.



1 The intent factor favors plaintiff in establishing likelihood of success on the merits where  
 2 the infringer has adopted a mark with actual or constructive knowledge that it was the  
 3 mark of another. *Brookfield* at 1059. See also *Official Airline Guides*, 6 F.3d at 1394  
 4 (Knowing adoption of another's work or mark raises the presumption of intent to deceive  
 5 the public.) In the context of the Internet, intentional registration of a domain name,  
 6 knowing that the second level domain belongs to a competitor, weighs in favor of the  
 7 likelihood of confusion. *Id.*<sup>10</sup> In this case, Defendant Michael Glanz was a "Moving  
 8 Helper®" between July 21, 2005 and December 16, 2005. SOF ¶1. He accessed Plaintiff  
 9 eMove's website on numerous times and over this five month period, Glanz was  
 10 contacted through the Moving Help® Market Place for at least 27 jobs. He declined 23  
 11 and accepted four. Of the four that were accepted by him, he completed one.<sup>11</sup> SOF ¶3.  
 12 He had actual and constructive knowledge that the marks "Moving Help®" and "Moving  
 13 Helper®" were owned, registered and/or exclusively licensed by Plaintiffs. (See marks  
 14 and copyright designations in use between July 21, 2005 and December 16, 2005 in the  
 15 printed version of [www.emove.com](http://www.emove.com), Exh. E to SOF.) His intent in the use of the marks  
 16 is clear and unmistakable. The inference of confusion is established as a matter of law.

17 Although constructive knowledge of Plaintiffs' marks is sufficient intent to  
 18 establish likelihood of success on the merits, it is also significant to note that two months  
 19 prior to going live with [www.hireahelper.com](http://www.hireahelper.com), Glanz publicly commented on the  
 20 desirability of the eMove website design, selecting eMove as one of his top three design  
 21 choices. (See [http://blog.hireahelper.com/2007/05/05/how-bad-design-increases-](http://blog.hireahelper.com/2007/05/05/how-bad-design-increases-business/)  
 22 [business/](http://blog.hireahelper.com/2007/05/05/how-bad-design-increases-business/) and print out attached to SOF as Exhibit D).

24 <sup>10</sup> Note, however, that intent to confuse consumers is not a required element of trademark infringement.  
 25 *Dreamwerks*, 142 F.3d at 1132, n. 12: "Absence of malice is not a defense to trademark infringement."

25 Nevertheless it is relevant to the inquiry of the likelihood of confusion or to the extent the court elects to consider  
 it as a matter of equity. *Brookfield*, *supra*.

26 <sup>11</sup> Low job acceptances and/or performance is a flag that the individual who signed up as a Moving Helper® is using  
 the eMove Moving Help® Market Place for reasons other than procuring work.

(cc) Degree of Care Likely to be Exercised by the Purchaser

The likelihood of confusion is also analyzed in the context of the discerning or reasonably prudent purchaser or consumer. *Brookfield* citing *Dreamwerks*, 142 F.3d at 1129. A reasonable consumer is expected to be more discerning and less easily confused when purchasing expensive items or when the products or services sold are marketed primarily to buyers with expertise. *Brookfield, supra*. However, confusion is more likely when dealing with inexpensive products or services because the customer is likely to exercise less care in determining the true identity of the mark or the source of the product or service. *Brookfield* at 1060. Defendants cannot deny that their services are marketed and sold to all consumers, including the least sophisticated consumers. *Id.*

(c) Likelihood of “Initial Interest” Confusion

“Initial interest confusion” occurs when Defendants’ trademark misuse initially confuses a consumer into believing a connection between the Defendant and the infringed trademark, even though the consumer clearly knows and understands by the time he has made his selection and purchase, that he is purchasing the services of someone other than the trademark holder. *Id.* Initial interest confusion comes up in the context of the Internet when Defendants use “metatags” to fool search engines into bringing consumers to their websites. A “metatag” is “HTML”<sup>12</sup> code not visible to the general consumer or web users, but which is “buried” in a website and used by search engines to identify sites being sought by the web user. *Brookfield, supra, at 1063-1065*. Because such use causes “initial interest” in the infringing website, federal courts conclude that use of another’s trademark in a sites’ metatags constitutes trademark

---

<sup>12</sup> “HTML” is the acronym for Hypertext Markup Language and is used as instructions stored within the database of the computer and not readily readable by the consumer or web user. *Perfect 10, Inc. v. Amazon.com, Inc. et al.*, 508 F.3d 1145, 1156 – (9<sup>th</sup> Cir. CA 2007).

1 infringement. *Id.*

2 The rationale behind the viability of this legal theory is that the initial “wrongful”  
 3 connection may lead to the development of interest in the competitor’s line of products or  
 4 services that the competitor would not have had, had it not otherwise used the plaintiff’s  
 5 mark. *Id. Television Enter. Network, Inc. v. Entertainment Network, Inc.*, 630 F.Supp.  
 6 244, 247 (D.N.J. 1986). Therefore, “initial interest confusion” is actionable under the  
 7 Lanham Act as a trademark infringement. *Brookfield, supra*, 174 F.3d at 1063.

8 In this case, Defendants are both misappropriating Plaintiffs’ goodwill *and*  
 9 causing consumer confusion by using the protected marks “Moving Help®” and  
 10 “Moving Helper®” in their metatags and otherwise on the website. The initial  
 11 “wrongful” connection made to Defendant Hire a Helper’s website may lead the  
 12 consumer to develop an interest in Defendants’ line of services, an advantage Defendants  
 13 would not have had if they had not otherwise used Plaintiffs’ marks.

14 2. COPYRIGHT INFRINGEMENT BY DEFENDANT HIRE A HELPER, AND  
 15 THE SECONDARY LIABILITY OF DEFENDANT MICHAEL GLANZ

16 (a) Copyright Infringement by Defendant Hire a Helper, L.L.C.

17 Defendants have also blatantly copied Plaintiffs’ website in violation of Plaintiffs’  
 18 copyrights. The rights bestowed upon a copyright holder include, *inter alia*, the  
 19 exclusive right to display, distribute and create derivative works.<sup>13</sup> 17 U.S.C.A. §§103,  
 20 106. *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1159, 1161. In this case,  
 21 in violation of Plaintiffs’ exclusive rights, its work in derivative form is incorporated in  
 22 concrete and permanent form in Defendants’ website at [www.hireahelper.com](http://www.hireahelper.com). This is a  
 23 violation of 17 U.S.C.A. §§102, 103.

24 To establish copyright infringement, the copyright owner must prove ownership of  
 25 the copyright and copying of that work by the defendant. *Johnson Controls, Inc. v.*

26 <sup>13</sup> A “derivative work” is defined as work based upon, or adapted from, one or more preexisting protected works. 17 U.S.C.A. §101

1 *Phoenix Control Systems, Inc.*, 886 F.2d 1173, 1174 (C.A. 9 Ariz. 1989). Plaintiff's  
 2 copyright registration is *prima facie* evidence of ownership and the trial court may rely  
 3 upon that registration as *prima facie* evidence of originality of the work. 17 U.S.C.A.  
 4 §401(c); *Johnson Controls*, *infra*. See Plaintiffs' Complaint, ¶s 10-12.

5 Computer software<sup>14</sup> is subject to copyright protection and a computer owner who  
 6 stores an image as electronic information and serves that electronic information directly  
 7 to the user is "displaying" the electronic information in violation of the copyright  
 8 holder's exclusive display rights. *Johnson Controls*, *supra*, at 1175; *Perfect 10*, *infra*.  
 9 The copyright holder's source code and object code are the literal components of the  
 10 program and have been consistently held to be a protected work. *Johnson Controls*, *supra*  
 11 at 1175. The Plaintiffs' structure, sequence, organization, user interface<sup>15</sup> and function are  
 12 also protected as "expression" of these components or ideas. *Id.* In this case,  
 13 Defendants copied Plaintiffs' structure, sequence, organization, user interface and  
 14 function. SOF ¶11-25. There is no mistaking the identical architecture<sup>16</sup> of Defendants'  
 15 website when compared to the website of eMove. *Id.* For example, both sites function as  
 16 a neutral venue for moving *and* providing moving assistance. SOF ¶11, 15. Entering the  
 17 Hire a Helper website, copying eMove, the user is given a selection of services,  
 18 including "moving help." Both sites illustrate the same or similar 1-2-3 stop process  
 19 ("Search, Connect, Move"/"Search, Contact, Pay".) SOF ¶12, 16. Both sites provide the  
 20 customer with the names, prices and customer reviews of potential movers. Both sites  
 21 utilize the same or strikingly similar organization, sequence and structure including links  
 22

---

23 <sup>14</sup> A computer program is made up of several different components, including the source code, object code,  
 24 structure, sequence and/or organization of the program, the user interface and the function or purpose of the  
 program. *Johnson Controls*, *supra*, at 1159, 1161, 1175.

25 <sup>15</sup> "User interface" is sometimes also referred to as the "look and feel" of the computer program. This term is  
 usually used when talking about the design of the screen and the manner in which the information is presented to  
 the user. *Johnson Controls, Inc. v. Phoenix Control Systems, Inc.*, *infra*.

26 <sup>16</sup> "Architecture" is the selection, arrangement and coordination of material within a computer program, including its  
 structure, sequence, organization, user interface and function.

1 to “Moving Help” within both sites and, within Hire a Helper’s website, links to  
2 “Cleaning Help”, Lawn Help”, “Frequently Asked Questions”, answers. SOF ¶13-14, 17-  
3 25. (See also print versions dated 11/16/07 attached as Exhibit F to SOF.)<sup>17</sup> Indeed, the  
4 sites’ organization and design are so strikingly similar that once a user has navigated one  
5 site, he can predict both the organization and content of the competitor’s site. *Id.* In this  
6 case, Defendants’ copyright violations are not just the creation of derivative works – they  
7 directly copy specific pages and they directly copy Plaintiffs’ website architecture.

8 The element of copying can be established by circumstantial evidence of access  
9 and substantial similarity between the work and the infringer’s work. *Johnson Controls*,  
10 *supra* at 1176. In this case, the evidence of access is direct, not simply circumstantial.  
11 Defendants had access to Plaintiffs’ work both directly through open use of Plaintiffs’  
12 program on the web as well as Defendant Glanz’ direct access to non-public confidential  
13 information and trade secrets when he agreed to act as a “Moving Helper®” with eMove,  
14 on July 20, 2005. Both of these uses were after Plaintiff U-Haul’s creation and  
15 publication of the website January 1, 2004 and its subsequent updated version in August,  
16 2005. SOF ¶1-7, 8. Both of these uses were also after eMove’s license and exclusive and  
17 continuous use of these works. SOF ¶8, 22. In this case, Defendants’ website  
18 www.hireahelper.com’s structure, sequence, organization, user interface and function  
19 created on or about July, 2007, including subsequent modifications and versions, is  
20 identical to that of Plaintiff U-Haul’s work and is a direct derivative work of Plaintiffs’  
21 original works. SOF ¶8, 11-21. This is a clear, unmistakable copy and infringement of  
22 Plaintiffs’ protected works and a violation of 17 U.S.C.A. §102, 103.

---

23  
24  
25 <sup>17</sup> In addition, there are certain proprietary information and trade secrets contained within documents and records  
26 that are presently the subject of a motion for order to seal. See Plaintiffs’ Plaintiffs’ Motion to Submit Certain  
Confidential Information and Trade Secrets Under Seal dated July 7, 2008.

1 (b). Secondary Liability of Defendant Michael Glanz

2 Defendant Glanz is secondarily liable for copyright infringement because he  
3 contributed to the actual infringement and/or failed to stop Defendant Hire a Helper from  
4 its direct infringing activities. The law recognizes two distinct theories of secondary  
5 liability, both of which apply to Defendant Michael Glanz. Contributory liability has  
6 been defined as the defendant's failure to stop his own actions which facilitate third-party  
7 infringement, while vicarious liability is based on the defendant's failure to cause a third  
8 party, such as Defendant Hire a Helper, to stop its directly infringing activities. *Metro*  
9 *Goldwyn Mayer Studios, Inc. v. Grokster*, 545 U.S. 913, 930, 125 S.Ct. 2764; *Perfect 10*,  
10 *infra*.

11 For contributory liability, one is liable for copyright and trademark infringement  
12 because he himself contributes to the infringement by intentionally inducing or  
13 encouraging direct infringement. *Perfect 10*, *supra* at 1169-70. Intent is imputed if the  
14 actor knows that the consequences are certain or substantially certain to result from his  
15 act. In that case, he is treated as if he had in fact desired or "intended" to produce the  
16 result. *Id.* at 1171. Therefore, an actor is contributorily liable if he knowingly takes steps  
17 that are substantially certain to result in such direct infringement.

18 Defendant Glanz took information gained from the non-public portions of Plaintiff  
19 e-Move's website and used it to create the architecture, style, dress and copy of  
20 [www.hireahelper.com](http://www.hireahelper.com). SOF ¶ 4. It can easily be said that the infringing consequences  
21 were certain or substantially certain to result and the requisite intent to infringe will be  
22 imputed to him as a matter of law. *Perfect 10*, *infra*.

23 The second distinct concept of secondary liability is vicarious liability. *Perfect 10*,  
24 *supra* at 1173. One can be vicariously liable if he has both the legal right and practical  
25 ability of supervising or controlling the direct infringer. *Id.* In this case Defendant  
26 Glanz has, and continues to have, the direct and absolute ability to supervise, manage

1 and/or control Hire a Helper and to control, limit or avoid infringing activity by  
 2 Defendant Hire a Helper on its website, thus he is vicariously liable for this infringement  
 3 by Defendant Hire a Helper.

### 4 3. COMMON LAW STATE CLAIM FOR UNFAIR COMPETITION

5 Arizona law permits injunctive relief where the evidence shows confusion.  
 6 *Household Finance Corp. v. Federal Finance Corp.*, 105 F.Supp. 164, 167 (D.C. Ariz.  
 7 1952). *Id.* See also *Kaibab Shop v Desert Son, Inc.*, 135 Ariz. 487, 662 P.2d 452  
 8 (Ariz.App. 1983) (injunction properly granted where there was evidence of confusion to  
 9 the public); *Boice v Stevenson*, 66 Ariz. 308, 187 P.2d 648 (Ariz. 1947) (preliminary  
 10 injunction granted where name was confusingly similar and parties were doing similar  
 11 business). Under Arizona Unfair Competition law, the use of Plaintiffs' marks by  
 12 Defendants causes the ordinary purchaser to be confused as to the source of the services  
 13 provided, whether such confusion is actual or only of "initial interest" and is, in any  
 14 event, actionable as unfair competition. *Brookfield, supra*, at 1063. There doesn't need to  
 15 be an exact likeness; similarity is enough. Such confusion entitles Plaintiffs to injunctive  
 16 relief under the common law of the State of Arizona. *Kaibab Shop; Household Finance.*

### 17 4. TRADE SECRETS

18 Arizona has adopted the Uniform Trade Secrets Act. A.R.S. § 44-401 et. seq. The  
 19 public policy supporting trade secret law in Arizona has been stated as providing a  
 20 balance of public interest in competition in the workplace, with the need for commercial  
 21 ethics. *Enterprise Leasing Company of Phoenix v. Ehmke*, 3 P.3d 1064, 1071 (2000).  
 22 This both encourages innovation and invention and establishes fair business practices. *Id.*  
 23 Plaintiffs' intellectual property and other proprietary information contained in the non-  
 24 published portions of the "eMove" website, including but not limited to Plaintiffs'  
 25 knowhow, business methods material, design, architecture, business practices, strategies,  
 26 marketing information, software technologies, processes, methods and applications,



1 constitute trade secrets as that term is defined by A.R.S. §44-401(4). Id. These trade  
 2 secrets afford e-Move a competitive advantage and are valuable to eMove. (SOF ¶28).  
 3 Reasonable precautions were taken by eMove to safeguard such secrets, including  
 4 providing limited access to Defendant Glanz to certain proprietary information under  
 5 specific terms and conditions. (SOF ¶26-28). Plaintiffs' trade secrets were obtained by  
 6 Defendants by improper means when Glanz accessed the non-public portions of eMove's  
 7 website and agreed to keep that intellectual property private and confidential.  
 8 Defendants' use of this information is wrongful and constitutes misappropriation  
 9 pursuant to A.R.S. §44-401(2) entitling Plaintiffs to injunctive relief.

10 B. PLAINTIFFS WILL BE IRREPARABLY HARMED IF DEFENDANTS ARE  
 11 NOT ENJOINED

12 In copyright and trademark infringement cases, showing of a reasonable likelihood  
 13 of prevailing on the merits raises a presumption of irreparable harm. *Johnson Controls,*  
 14 *Inc. v. Phoenix Control Systems, Inc.*, infra (copyright); *GOTO.COM v. Walt Disney*  
 15 *Company*, infra (trademark infringement).

16 C. PUBLIC INTEREST FAVORS THE GRANTING OF AN INJUNCTION

17 Public policy proscribing trademark infringement, copyright infringement and  
 18 other state common law claims have been stated as the balancing of public interest in  
 19 competition with the need for commercial ethics. *Enterprise Leasing Company of*  
 20 *Phoenix v. Ehmke*, 197 Ariz. 144, 3 P.3d 1064, 1071 (2000). See also *Smith v. Montoro*,  
 21 648 F.2d 602, 607 (C.A. Cal. 1981)(Infringement is wrongful and against public policy  
 22 because it involves an attempt to misappropriate or profit from another's talents and  
 23 workmanship.) This is particularly true where Defendants have acted shamelessly in the  
 24 outright theft of Plaintiffs' protected intellectual property. Issuing injunctive relief will  
 25 also promote the strong public policy of encouraging innovation and invention and hold  
 26 Defendants to the standards established for fair business practice.

1 D. NOMINAL BOND SHOULD BE REQUIRED

2 District Courts have wide discretion in ordering a security bond in an amount the  
3 court deems proper. Rule 65(c), F.R.C.P., 28 U.S.C.A. In this case, a nominal bond is  
4 justified in the amount of \$1,000.

5 IV. CONCLUSION

6 There is a high likelihood of success on the merits and Plaintiffs will be  
7 irreparably harmed if Defendants are not immediately enjoined. In trademark and  
8 copyright infringement cases, irreparable harm is established upon the showing of a high  
9 likelihood of success on the merits. Plaintiffs are the owners and/or exclusive licensees of  
10 Moving Help®, Moving Helper® and the Moving Help®MarketPlace. Plaintiffs are also  
11 the owners and/or exclusive licensees of copyright work located at this website.  
12 Plaintiffs' creation, use and/or registration of its marks and works predates the wrongful  
13 use by Defendants. That use is false, misleading and causes confusion as to the origin  
14 and/or affiliation of Defendant Hire a Helper's services with those of Plaintiff eMove  
15 and/or creates "initial interest" confusion. Defendant Hire a Helper has also copied and  
16 is displaying derivative works belonging exclusively to eMove. Plaintiffs' marks and  
17 works by Defendant Hire a Helper. Plaintiffs' marks and works in the non-public sections  
18 of eMove's "Moving Help® MarketPlace" constitute trade secrets under the laws of the  
19 State of Arizona. These trade secrets were wrongfully obtained by Defendant Glanz,  
20 communicated by Glanz to Hire a Helper and is a violation of A.R.S. §44-401(2).

21 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of July, 2008.

22 BROENING OBERG WOODS & WILSON, P.C.

23 By s/s Donald Wilson, Jr.  
24 Donald Wilson, Jr.  
25 P. O. Box 20527  
26 Phoenix, Arizona 85036  
Attorneys for Plaintiffs